SUPREME COURT, U. S.

OCT 27 1969

JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969.

**No. 612**

CLARESA F. ARMSTRONG BROWN,
*Petitioner,*

*vs.*

COMMERCIAL NATIONAL BANK OF PEORIA,
AS TRUSTEE, ET AL.,
*Respondents.*

## REPLY TO RESPONDENTS' BRIEF.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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## REPLY TO RESPONDENTS' BRIEF.

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*To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Respondents suddenly seem anxious to argue the merits of this case. So are we. But we realize that this is not the proper forum in which to do so.

### THE JURISDICTION.

Respondents argue that the federal constitutional point was not raised in apt time. But, Petitioner raised it as soon as she knew it, and the Supreme Court of Illinois fully considered it and decided it. On learning of it, she at once filed a motion before a justice of the court to reconsider her petition for rehearing on the sole ground that she had been denied due process of law guaranteed to her

by the 14th Amendment. The justice, to whom petitioner presented her motion, entered an order that her motion be taken under consideration by the entire court. (Appendix to Petition for Certiorari, p. A. 37.) On request, briefs were filed by both sides and thereafter the Supreme Court of Illinois considered and denied Petitioner's motion. This Court has declared in a vast number of cases that it is an "elementary rule that it is irrelevant to inquire how and when a Federal question was raised in a [state] court . . . when it appears that such question was actually considered and decided". *Manhattan Life Ins. Co.* v. *Cohen,* 1913, 234 U. S. 123, 134; *Nickey* v. *Mississippi,* 1933, 292 U. S. 393, 394; *North Carolina RR Co.* v. *Zachary,* 1913, 232 U. S. 248, 257; *Whitfield* v. *Ohio,* 1935, 297 U. S. 431, 435, 436; *Montana ex rel. Haire* v. *Rice,* 1906, 204 U. S. 291, 299; *Ill. Central RR Co.* v. *Kentucky,* 1910, 218 U. S. 551, 556.

Respondents admit (brief p. 8) that the Federal question was so considered and decided.

## THE NATIONAL PROBLEM.

Respondents would ignore the fact that the Judicial Council of the United States has forbidden judges to serve as directors of private corporations; that the legislature of Illinois has made the same proscription; that despite these prohibitions certain judges throughout the country (as in this case) are still serving as directors of banks; that much litigation is now coming before the courts involving bank trusts, which have had an explosive growth in the past decade; and that only an opinion of this Court can end this improper practice in cases affecting banks. (Petition for Certiorari pp. 6-8.)

We suggest that this Court may never again have so good an opportunity as afforded by this case to declare that no judge should serve as a director of a private corpo-

ration. Should not this Court also anounce that every judge must immediately disqualify himself when he owns stock in a private corporation that might be directly affected by his decision? Should not this Court suggest that a most important burden resting on a judge is to be constantly alert to his possible disqualification? Should not this Court, so far as possible, give the lower courts warning and guidance on that subject?

## CONCLUSION.

As the 9th Circuit Court of Appeals has noted: "The Court ought not to be astute to discover refined and subtle distinctions" to save a case from the maxim that no man ought to be a judge in his own case. "A sound public policy, which is interested in preserving every tribunal appointed by law from discredit, imperiously demands its observance." *In re Honolulu Consol. Oil Co.*, 243 Fed. 349.

Respectfully submitted,

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